

S.B. CIVIL WRIT PETITION No.5660/2004

M/s MAYUR CINEMA NAYAPURA, KOTA V/s M/s JAI
PICTURES Pvt. Ltd. & ANOTHER

3.1.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri P.C. Shah for the petitioner.
Shri Prahlad Sharma for the respondents.

Learned counsel for the petitioner has relied upon in case National Aluminium Co. Ltd. V/s Pressteel & Fabrications (P) Ltd. and another (2004) 1 SCC 540) and another in case National Building Construction Corporation Ltd. V/s Lloyds Insulation India Ltd. (2005) 2 SCC 367). In those cases, the Hon'ble Supreme Court held that in view of the mandatory language of section 34 of the Arbitration and Conciliation Act, 1996, an award subjected to challenge u/s 34 within time stipulated becomes unexecutable. There is no discretion left with the court to pass any interlocutory order except to

adjudicate on the correctness of the claim. The learned counsel for the petitioner submits that the objections filed by the petitioner u/s 34 of the Act of 1996 are still pending for consideration in the court of District Judge, Jaipur and yet the respondent is insisting on the execution of the award. Learned counsel for the respondents submits that the objections having not been filed within time, the aforesaid two judgments would not apply. He further submits that the petitioner is guilty of suppression of material fact and has not come with clean hands inasmuch as he in spite of having given undertaking not to challenge the award and accepted payment of the awarded sum on that basis cannot be permitted to have later file objections.

When the objections are yet to be decided by the aforesaid court, that court would

obviously deal with those objections in accordance with law. While therefore allowing the writ petition and directing that that execution of the award shall remain stayed till decision on the objections raised by the petitioner are made by the such court, I direct the District Judge, Jaipur City, Jaipur or the concerned court where the matter may have been transferred in the meantime to finally decide the objections within a period of three months from the date copy of this judgment is placed before it.

This writ petition is accordingly disposed of with no order as to costs.

(MOHAMMAD RAFIQ), J.

CHAUHAN/